IN THE

Supreme Court of the United States

October Term, 1945.

No. ....

W. P. Sewell and R. B. Sewell, *Petitioners,*

v.

Commissioner of Internal Revenue, *Respondent.*

BRIEF IN SUPPORT OF PETITION.

A brief statement of the principles underlying the cases with which the decision below conflicts will make it clear that the principles asserted do not represent any invasion by the State courts of the jurisdiction of the Tax Court or other Federal courts called upon to determine who is taxable upon the income of certain property.

The binding force of a State Court's judgment does not arise from any supposition that the State Court is a higher authority than the Tax Court, or that the State Court has any right to control the Tax Court by reviewing a holding of the Tax Court or by making a determination as to the

taxability by the Federal Government of any income. Clearly, no State court has any such authority.

The binding force of a State court judgment as to the ownership of property arises from the fact that Federal tax law itself makes taxability of income depend on ownership and that ownership can generally be finally determined only by a state tribunal having the claimants before it. In taxing the income from property to the owner, Congress did not undertake to change the tests or principles which are applicable under laws of the several States for the determination of ownership, or to displace the tribunals usually charged with the determination of ownership. For example, a devisee claiming under a will is taxed on the income subsequently derived from the devised property if, but only if, the devise effectively vests the property in him. If the court of that State in a proper proceeding and with the parties in interest before it should hold the will invalid for any reason of law or fact, the devisee will not be taxed with the income since he never became the owner of the property.

The judgment of the State Court therefore is ultimately decisive of the tax question in such a situation, because Congress has provided that income from property shall be taxed to the owner and because Congress contemplated that ownership will be established in accordance with State law. Congress did not contemplate that income from property held by a tribunal having jurisdiction over the parties to be the property of A will be taxed to B who is not entitled to the property or to the income therefrom. This must be so, since the decision of the Tax Court will in no way help to sustain a claim by B to the property or to the income.

The court below in the last sentence of the opinion denying the motion to remand (page 18, *infra*) suggests that the State Court judgment is not determinative of taxability because it may conceivably have been based upon estoppel or laches or acceptance of benefits or rights of third parties, and, consequently, binding between the parties but not

against the Federal government. No such issue was presented in the State Court proceedings, nor did the Government make any such contention in the court below. It is true that a person may be estopped for reasons of fairness from claiming the ownership of property which is legally his, or he may by laches lose the right to insist upon some right to which he is entitled. But clearly no such question, nor any other question of the character suggested by the last sentence of the opinion of the court below, is posed by the decree of the State Court here under consideration. The State Court record (R. 227-241) clearly indicates that that case presented no question except whether a bona fide gift of stock was actually made from husband to wife in 1934 and whether the wife thereafter remained the absolute owner of the property, and that the decree of the State Court determined that question and only that question.

The action of the Federal courts in giving effect to State law and to the decisions of State courts in matters such as the ownership of property which Congress has left to the States is in no way inconsistent with decisions of the Federal courts ignoring State court decisions in fields in which Congress has clearly intended that Federal law should prevail.[7]

A State Court decree has no less weight because the same question has previously been decided differently by the Tax Court. This was true in the *Blair* case, *supra,* and in *Eisenmenger* v. *Commissioner, supra,* and in *Hubbell* v. *Helvering, supra.* This, we submit, is not an invasion of the jurisdiction of the Tax Court, but an incident of our judicial structure in a Federal system where one court can only collaterally consider a question of ownership

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[7] Thus State nomenclature is disregarded in determining whether property was received by "inheritance." *Lyeth* v. *Hoey,* 305 U. S. 188; whether a power of appointment was a "general power of appointment," *Morgan* v. *Commissioner,* 309 U. S. 78; or whether property was a "future interest"; *United States* v. *Pelzer,* 312 U. S. 399; and in many similar situations.

as between private parties when such consideration is required in a Federal tax matter involving one of the parties, whereas the other court in a case properly brought before it can finally settle in fact and law the rights of the parties in the property.

In two of the cases frequently cited herein, *Blair* v. *Commissioner, supra,* and *Rhodes' Estate, supra,* the courts have considered and rejected the argument for the Commissioner that the acceptance of the decrees of the State Courts would make possible a loss to the Federal revenue through fraud or collusion. See also the discussion of this question by the Circuit Court of Appeals for the Seventh Circuit when the *Blair* case was before it. *Commissioner* v. *Blair,* 83 F. (2d) 655.[8]

A similar line of argument was urged upon and rejected by this Court in *Vanderbark* v. *Owens-Illinois Glass Co.,* 311 U. S. 538, in reversing and remanding the case in order that the lower Federal Court might give consideration to a

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[8] After holding that it was bound to follow a State court interpretation of the character of a trust, even though it had previously decided the issue otherwise, the Circuit Court in the *Blair* case stated (at p. 657):

> "The correctness of our conclusion is not entirely free from doubt. We would be better satisfied if the suit in the state court had been more adversary in its nature. There is that which suggests a friendly suit to avoid taxes, to which there was no opposition or adverse party. * * * In other words it was not unlike a consent decree. But consent decrees are binding if entered by a court of competent jurisdiction with the parties properly before it, in the absence of a showing of collusion between the parties or fraud upon the court. The record before us does not show either collusion or fraud, save by circumstances which are also consistent with good faith on the part of the litigants. We, therefore, accept the Illinois Appellate Court decision as controlling upon the nature of this trust."

State Court decision rendered subsequent to the decision there on appeal.[9]

We have stated above (page 4) that the Government in the court below did not urge that the judgment of the State court should be denied effect because it was untimely, and the court below clearly did not place its decision upon any such ground. Therefore, certainly no such contention would be now appropriate. But if any such issue should be raised the answer would seem to be that where an issue relating to a taxpayer's liability is properly brought into a case on appeal, which issue was not urged in the Tax Court and which could not have been urged when the case was tried in that Court, the appropriate procedure is to remand to the Tax Court for further evidence and consideration upon the new issue. *Hormel* v. *Helvering,* 312 U. S. 552; *Helvering* v. *Richter,* 312 U. S. 561. Cf. *Vandenbark* v. *Owens-Illinois Glass Co., supra.*

In a number of the cases cited where State court judgments have been held conclusive in Federal tax proceedings, the State court judgments were not rendered until after a controversy with the Commissioner had arisen. In the *Blair* case, *supra,* the decision of the Board of Tax Appeals had become final before

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[9] Mr. Justice Reed, speaking for the Court, said (at p. 543):

> "Respondent earnestly presses upon us the desirability of applying the rule that appellate courts will review a judgment only to determine whether it was correct when made; that any other review *would make the Federal courts subordinate to State courts* and their judgments subject to changes of attitude or membership of state courts, whether that change was normal or *induced for the purpose of affecting former federal rulings.* While not insensible to possible complications, we are of the view that, *until such time as a case is no longer sub judice,* the duty rests upon Federal courts to apply state law under the Rules of Decision statute in accordance with the then controlling decision of the highest state court. Any other conclusion would but perpetuate the confusion and injustices arising from inconsistent Federal and State interpretations of state law." (Emphasis supplied.)

the State court suit was filed; but the Board decision was held not to be *res judicata* when the State court judgment was introduced in a proceeding for a later year. The same was true in *Hubbell* v. *Helvering, supra.* In the *Freuler* case, *supra*, the State court judgment held controlling was rendered in a proceeding instituted after petition had been filed with the Board of Tax Appeals. In the *Eisenmenger* case *supra,* the Board of Tax Appeals granted a rehearing to admit a State court judgment rendered after the decision of the Board.

Respectfully submitted,

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January 16, 1946.